

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 95-0385 CSET
Controlled Substance Excise Tax – Imposition
For Tax Period: 1993

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ISSUE

I. Controlled Substance Excise Tax — Imposition

Authority: IC 6-7-3-5; IC 35-48-4-11; IC 6-8.1-5-1

Taxpayer protests the imposition of the controlled substance excise tax.

STATEMENT OF FACTS

On August 28, 1993, police arrested taxpayer for possession of marijuana. Following the arrest, the Department assessed against taxpayer Indiana's controlled substance excise tax on 180.5 grams of marijuana. At the statutory rate of \$40.00 per gram, the base tax deficiency amounted to \$7,220.00. With the addition of the statutory 100% penalty, taxpayer's total liability came to \$14,440.00. Taxpayer protests this assessment.

I. Controlled Substance Excise Tax – Imposition

DISCUSSION

The Department notified taxpayer, in writing, of the scheduled date and time for the hearing of this protest. Taxpayer failed to appear or send any representation. Consequently, these findings are based on information that was available to the Department at the time of the scheduled hearing.

Taxpayer argued in his protest letter that the controlled substance excise tax was assessed in error. Taxpayer maintained that he did not possess any controlled substances; the 180.5 grams of marijuana belonged to another person.

Pursuant to IC 6-7-3-5:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered;
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C 841 through 21 U.S.C. 852. The tax does not apply to a controlled substance that is distributed, manufactured, or dispensed by a person registered under IC 35-48-3.

Possession of marijuana is defined in IC 35-48-4-11:

Section 11. A person who:

- (1) knowingly or intentionally possesses (pure or adulterated) marijuana, hash oil, or hashish;

commits possession of marijuana , hash oil, or hashish, a Class A misdemeanor.

Police, as a result of information gathered in an ongoing narcotics investigation, obtained a warrant to search both taxpayer's residence and a vehicle located on residential property. During the search, police discovered one-half (1/2) pound of marijuana. Taxpayer, at that time, told police the marijuana was for his own personal use.

Later, after arrest, taxpayer claimed the 180.5 grams of marijuana found at his residence actually belonged to another person. Taxpayer, however, has failed to provide the Department with any evidence to support this assertion.

Pursuant to IC 6-8.1-5-1, the notice of proposed assessment is prima facie evidence that the Department's claim is valid. The burden of providing information rebutting this assessment rests with the taxpayer. Taxpayer, in this instance, has failed to meet his burden of proof.

FINDING

Taxpayer's protest is denied.